

RECEIVED

APR 19 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Policy and Rules Concerning)	
the Interstate, Interexchange)	CC Docket No. 96-61
Marketplace)	
)	
Implementation of Section)	
254(g) of the Communications)	
Act of 1934, as amended)	DOCKET FILE COPY ORIGINAL

COMMENTS OF GENERAL COMMUNICATION, INC.

General Communication, Inc. (GCI) submits these comments in response to the Commission's Notice of Proposed Rulemaking (Notice) (FCC 96-123), released March 25, 1996. The Commission seeks comment on a number of items. Herein, GCI comments on the definition of the relevant product and geographic markets, the potential provision of "out-of-region" interstate services by local exchange carriers (LECs) and the issues relating to geographic rate averaging and rate integration. GCI will submit comments on other matters addressed in the Notice on April 25, 1996.

I. Definition of Relevant Product and Geographic Markets

The Commission invited comment on its prior determination that interstate, domestic interexchange communications service comprise the relevant product market and that all of the United States (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. offshore points) comprise the

No. of Copies rec'd
List ABCDE

2411

relevant geographic market for this product, with no relevant submarkets. The Commission stated that more sharply focused market definitions might provide a more refined tool for evaluating whether a carrier or group of carriers has market power, and the Commission specifically observed that such a more refined tool may be necessary to evaluate whether the Bell Operating Companies (BOCs) possess market power.

GCI agrees with the Commission that more narrowly focused definitions of the relevant market are needed, particularly in reference to the relevant geographic market. The present broad definitions are not adequate to identify carriers that possess market power within specific geographic markets, including Alaska.

However, the Commission's proposed approach to this issue is not adequate. The Commission tentatively concluded that the relevant geographic market for interstate, interexchange services should be defined as all calls from one particular location to another particular location. The Commission further concluded that, in most cases, it should continue to treat interstate interexchange service as a single national market. These conclusions are inherently contradictory. The contradiction is not cured by the Commission's recognition that there may be "special circumstances" that might require individual examination of regions, particularly since the Commission proposed to examine particular markets for the presence of market power only if there is "credible evidence"

suggesting market power.

GCI does not believe this approach is adequate. There are many cases in which it will be necessary to evaluate geographic submarkets to determine if a carrier possesses market power.¹

The debate should not center on whether a national market analysis is sufficient in "most cases" or whether only "special" circumstances require more focused analysis. The Commission should not, based on a presumption that a national analysis is sufficient in most cases, be reluctant to analyze any specific situation in which market power in a smaller geographic market is alleged. Any non-frivolous allegation of market power in a smaller geographic market should be investigated.

The obvious characteristics of some geographic submarkets should provide adequate justification for examining that market for the presence of market power. Such obvious characteristics include the de facto or de jure existence of a monopoly in the provision of service from one geographic market.² Similarly, a shortage of capacity in interstate transport should be sufficient. Just as the Commission identified "excess capacity in interstate transport" as one

¹This is particularly true in Alaska and may be true in submarkets served by BOCs.

²AT&T/Alascom retains a facilities monopoly in rural Alaska. AT&T maintains carrier rates to and from those areas that exceed retail rates.

reason that reduces the likelihood that an interexchange carrier could exercise market power in point-to-point markets, the Commission should certainly recognize that a shortage of such capacity is sufficient reason to examine the market for the presence of market power.³

GCI agrees that it is not feasible to conduct a market power analysis that defines separate geographic markets between each pair of individual locations. However, it is not necessary to identify any specific geographic area, such as, Major Trading Areas (MTAs), that should be used as the geographic areas for analysis. Market power does not necessarily follow any preestablished lines. The analysis should be conducted for any geographic area for which there is an allegation of market power.

II. Separation Requirements for Independent Local Exchange Carriers and Bell Operating Company Provision of "Out-of-Region" Interstate, Interexchange Services

GCI believes that the Commission should retain the separations requirement that independent LECs must meet in order to be treated as non-dominant for their provision of interstate interexchange service. Maintenance of that requirement even for provision of "out-of-region" services is

³There is a severe constraint of fiber optic capacity linking Alaska to the lower 48. That capacity is being rationed by AT&T/Alascom.

the only practical alternative.⁴

In the Competitive Carrier proceeding, the Commission determined that separations requirements should be imposed on independent LECs and that affiliates of such LECs would be treated as non-dominant if they met certain criteria. The separation requirement was deemed necessary to protect against cost-shifting and anticompetitive conduct.

The Commission seeks comment on whether the separations requirement should be eliminated as a condition for non-dominant treatment of independent LECs for provision of out-of-region interstate interexchange service. However, the Commission stated it would defer consideration of the appropriate treatment for in-region services.

The Commission should continue the separation requirement for independent LECs. This requirement does not constitute a significant burden, yet it does protect against cost-shifting. Cost-shifting can occur even for out-of-region service. The slight burden of the requirement is more than justified by the benefit.

Further, it does not seem practical to establish different requirements for in-region and out-of-region service. In fact, establishing different requirements might cause an unnecessary burden, even though a uniform separation requirement is not a significant burden. If the separation

⁴This is necessary particularly in view of the Commission's decision not to consider in this proceeding the requirements for provision of in-region service.

requirement were lifted for out-of-region interstate interexchange service, independent LECs could begin provision of out-of-region service directly and then argue that it would be a burden to establish a different rule for in-region service. Unless the separation requirement is totally lifted for independent LECs for all interstate interexchange service, in some further proceeding, it should be retained for out-of-region service.

III. Geographic Rate Averaging and Rate Integration

Section 254(g) of the Communications Act, as amended by the 1996 Act, requires the Commission to adopt rules to require that rates charged for interexchange services be geographically averaged (i.e., no higher in rural and high cost areas than in urban areas) and integrated (i.e., no higher for calls of the same distance). The Commission seeks comment on rules to enforce these requirements and on whether the States continue to be responsible for enforcing geographic rate averaging for intrastate services.

The requirements of geographic rate averaging and rate integration must be understood in light of the Conference Report.⁵ The Report states that section 254(g) is intended to incorporate the existing policies of the Commission on these matters. Further, the conferees recognized that non-averaged rates have been permitted in some instances and that exceptions to the rate averaging requirements could be

⁵Telecommunications Act of 1996, Report 104-458.

allowed.

Further guidance regarding Section 254(g) is provided by Section 254(b), which sets out the Universal Service Principles to guide the Joint Board and the Commission. Section 254(b)(3) states that consumers in all regions, including high cost regions, should have access to services including interexchange services "at rates that are reasonably comparable to rates charged for similar services in urban areas."

GCI supports the principles of rate averaging and rate integration. Rate integration and rate averaging have had a beneficial effect on rates for service to Alaska, and GCI supported the continued application of the rate integration principle throughout the Alaska Joint Board proceeding⁶ and the purchase of Alascom by AT&T. Additionally, GCI has supported the rate averaging requirement contained in regulations of the Alaska Public Utilities Commission (APUC) for intrastate interexchange service. The APUC should not be preempted from applying that regulation so long as it is consistent with FCC regulations.

The Commission also proposes, in light of its tentative conclusion to forebear from requiring interexchange carriers to file tariffs, not to enforce rate averaging and rate integration through the tariff process. Instead, the

⁶Integration of Rates and Services, 9 FCC Rcd 3023 (1994), Final Recommended Decision, 9 FCC Rcd 2197 (1993).

Commission proposed that carriers file "certifications" of compliance. GCI disagrees with this proposal.

The requirements of rate averaging and rate integration should be enforced by the mandatory filing of basic interstate interexchange tariffs for residential and small business customers.⁷ These basic rates will establish the geographically averaged, integrated rates that are available to all consumers and that ensure that reasonably comparable rates and services are available to all consumers. Discounts and promotions would be allowed and should not normally be considered a violation of the rate averaging requirement.

The Commission's complaint process is not an adequate means of enforcing the requirements of rate averaging. The Commission now has an extensive backlog of complaints, and resolution of those complaints is extremely time-consuming. As a result, complaints are not resolved for lengthy periods. As the Commission attempts to address its enormous duties under the Telecommunications Act, it seem unlikely that the Commission will be able to devote more resources to the complaint process. In reality, enforcement through the complaint process will, for many consumers, mean no enforcement at all. Filing of tariffs for basic rates, as discussed above, is more efficient and will result in better

⁷There are additional reasons, other than enforcement of rate averaging and rate integration, that filing of such tariffs should continue. Those reasons will be discussed in comments to be filed April 25, 1996.

enforcement of the requirements.

Conclusion

The Commission should consider the comments herein when addressing the issues in this proceeding.

Respectfully submitted,

GENERAL COMMUNICATION, INC.

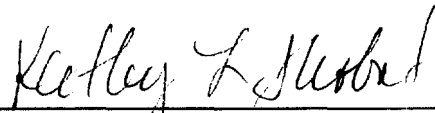
A handwritten signature in cursive script, appearing to read "Kathy L. Shobert", is written over a horizontal line.

Kathy L. Shobert
Director, Federal Affairs
901 15th St., NW, Suite 900
Washington, D.C. 20005
(202)842-8847

April 19, 1996

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed this 19th day of April, 1996.

A handwritten signature in cursive script, reading "Kathy L. Shobert", written in dark ink.

Kathy L. Shobert
Director, Federal Affairs
901 15th St., NW, Suite 900
Washington, D.C. 20005
(202) 842-8847

CERTIFICATE OF SERVICE

I, Kathy L. Shobert, do hereby certify that on this 19th day of April, 1996 a copy of the foregoing was sent by first class mail, postage prepaid, to the parties listed below.



Kathy L. Shobert

Janice Myles
Federal Communications Commission
1919 M St., NW
Room 544
Washington, DC 20554

ITS
2100 M St., NW
Suite 140
Washington, DC 20037